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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/434,845	11/04/1999	FRANK G. BORDONARO	2705-87	4448

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EXAMINER

JONES, PRENELL P

ART UNIT	PAPER NUMBER
2664	2

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/434,845	Applicant(s) Bordonaro et al
Examiner Prenell Jones	Art Unit 2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Nov 4, 1999
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-3, 11-16, 18-20, and 24-32 is/are allowed.
- 6) Claim(s) 4, 17, and 21 is/are rejected.
- 7) Claim(s) 5-10, 22, and 23 is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some* c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a *single paragraph* on a separate sheet within the range of **50 to 150 words**. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 U.S.C. § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17 recites the limitations "the receive-sequence-number sub-field" and "representing the relative send timing" in lines 23 and 28 of page 24. There is insufficient antecedent basis for this limitation in the claim.

4. Claims 5 and 22 objected to because of the following informalities: Applicant is claiming on page 21, line 13 and page 26, line 14 &15, "writing into the timing probe data packet *at the receiver data*

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including at least a". Examiner believes Applicant has left out a word or two that would clarify Applicants intent with regard to the emphasized limitation. Appropriate correction is required. Claims 6-10 and 23 depend on claim 5 and 22, therefore, claims 6-10 and 23 are objected to as well.

Claim Rejections - 35 U.S.C. § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al in view of Chandra et al and Parker et al and Boyden.

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Regarding claims 4 and 21, Reed discloses (col. 26, line 41 thru col. 27, line 13) monitoring performance of a network wherein the network utilizes Internet access (Internet protocol), (col. 96, line 22-36) service objects (receiver) receipt method use data exchange to query (probe) servers and perform network packet timing tests (probe) to determine optimal server associated with providing best performance, (col. 104, line 11-31) monitoring changes in attributes of communication object, authentication process that utilizes time stamps and time/date stamps (col. 108, line 15-45, col. 109, line 58-67). Reed is silent on timing probe associated with a time of day stamp. In analogous art, Chandra discloses (Abstract, 1, 6, 7, 9, col. 1, line 54-67, col. 4, line 19 thru col. 5, line 32, col. 6, line 37-64, col. 8, line 22-46) monitoring network performance using test protocol, monitoring times and days, network performance based on timing measurements utilizing Internet Protocols, analyzing and calculating performance of communication wherein timing records are utilized, (col. 19, line 23-34) time stamps are utilized, and Boyden discloses (Figures 1, 4a & 4b, col. 4, line 66 thru col. 5, line 7, col. 8, line 1-67) monitoring specific features of a communication system in determining transmission quality associated with an ATM (packet based) and Internet (IP) system wherein the utilization of timing probes are communicated between sender and receiver for the purpose of synchronization, and Parker discloses (col. 8, line 9-31) an authentication system that uses timing interrogation (timing probe) which is associated with timing pulses that give the time of day (TOD) which are tagged (stamp). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have been motivated to implement a send time of day attribute with a timing probe as taught by Parker with the combined teachings of Reed, Chandra and Boyden for the purpose of providing additional synchronization in the communication among devices and further monitoring the performance of a communication system.

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Allowable Subject Matter

7. Claims 1-3, 18-20, 24-32 are allowed over prior art.

Regarding claim 1, the limitation “transmitting one or more performance probe data packets over the network to a respondent address in accordance with a predefined protocol to which software residing at the respondent address is programmed to respond in a predefined way, analyzing a response from the software resident at the respondent address in accordance with respect to one or more defined timing and sequencing parameters to measure network performance” is absent from the art. Claims 2 and 3 depend on 1, therefore, claims 2 and 3 are allowed as well.

Regarding claim 11, the limitation “responder software program receiving probe data packet , placing at least a receive time of day stamp, and echoing the probe data packet by transmitting the modified packet back to sender software program, sender software program further determining a difference between the receive time of day stamp and send time of day stamp, whereby determined difference represents data packet transmission timing through the network” is absent from the art. Claims 12-15 depend on 11, therefore, claims 12 and 15 are allowed as well.

Regarding claim 16, the limitation “first packet probe field including a send-time sub-field, receive-time sub-field and delta-time sub-field; the sender address first placing in the send-time sub-field the send-time of day (STOD) indication, placing in the receive-time sub-field the receive-time of day (RTOD) at the responder network address, echoing the data packet including the probe field at a respondent network, repeating the generating, first placing, sending, receiving, second placing, and echoing steps for second

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data packet, calculating packet jitter based on the STOD and RTOD sub-fields for the first/second data packets" is absent from the art.

Regarding claim 18, the limitation "instructions for generating one or more performance probe data packets wherein each performance probe data packet being dedicated to network performance measurement, each data packet containing one or more defined timing and sequencing parameters including send time of day, receive time of day, send sequence number and receive sequence number, and analyzing a response from the software resident at the respondent address in accordance with the predefined protocol with respect to the one or more defined timing and sequencing parameters to measure the performance of the network" is absent from the art. Claims 19 and 20 depend on claim 18, therefore, claims 19 and 20 are allowed as well.

Regarding claims 24 and 30, the limitation "probe packet containing at least a send time of day (STOD) stamp, responder receiving probe data packet, placing at least a receive time of day (RTOD) stamp to produce a modified probe data packet and echoing the modified probe data packet by transmitting the modified probe data packet back to sender, sender determines difference between the RTOD stamp and STOD stamp" is absent from the art. Claims 25-29 and 31-32 depend on claims 24 and 30 respectively, therefore, claims 25-29 and 31-32 are allowed as well.

Claims 5-10, 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Regarding claims 5-10, 22 and 23, the limitation "writing into the timing probe data packet at the receiver" is absent from the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell Jones whose telephone number is (703) 305-0630. The examiner can normally be reached on Monday thru Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (703) 305-4366. The fax phone number for the organization where this application or proceeding is assigned is (703) 873-9314

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Prenell Jones

March 20, 2003

A handwritten signature in black ink that reads "Prenell Jones". The signature is fluid and cursive, with "Prenell" on the top line and "Jones" on the bottom line.